

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

**IN RE: JOHNSON & JOHNSON
TALCUM POWDER PRODUCTS
MARKETING, SALES PRACTICES,
AND PRODUCTS LIABILITY
LITIGATION**

MDL NO. 2738 (MAS) (RLS)

**JUDGE MICHAEL A. SHIPP
MAG. JUDGE RUKHSANA SINGH**

This document relates to:

Eleanor Mancini 3:17-cv-12662
Renee Doyle 3:17-cv-12715
James Fierro 3:17-cv- 12716
Patricia Christian 3:17-cv-12719
Robert Gadfield 3:17-cv-12704

PLAINTIFFS' RESPONSE TO THE COURT'S ORDER TO SHOW CAUSE

INTRODUCTION

Plaintiffs in the above referenced matters respectfully file their response to the Court's Order to Show Cause. (Doc. No. 32811). For the reasons specified below, Plaintiffs respectfully request that the Court grant a time extension to serve their Plaintiff Profile Forms.

The (5) Plaintiffs identified in Defendants' Exhibit A (Doc. No. 32811 pp. 3-5) that are represented by Napoli Shkolnik hereby respond that: (1) one Plaintiff will be voluntarily discontinuing her case, and (2) other Plaintiffs request an extension of time to complete their Plaintiff Profile Forms. Accordingly, the Plaintiff's cases should not be dismissed.

There are four Plaintiffs referenced below who need additional time to complete their Plaintiff Profile Forms. Despite multiple efforts, undersigned counsel has been unable to reach Plaintiffs

since the bankruptcy stay was lifted. One Plaintiff recently passed away due to the grave nature of her cancer diagnosis. We have put in place concrete efforts to locate this Plaintiff's heirs to see if they want to continue with the claim. Counsel believes that more time is needed in order to exhaust all search efforts, and as a result, these Plaintiffs respectfully request an additional 30 days to submit their Plaintiff Profile Forms. This extension of time will not cause any substantial prejudice to Defendants.

ARGUMENT

Although Federal Rules of Civil Procedure grant the Court discretion in fashioning appropriate sanctions under Rule 37, the Third Circuit has noted that it is not "equivalent to carte blanche" as due process limits the courts' discretion in two ways: (1) any sanction must be just, and (2) the sanction must be related to the particular claim which is at issue in the discovery order. (Please see *Clientron Corp. Devon IT, Inc.* 894 F. 3d, 568, 580 [3rd Cir. 2018]; *Harris v City of Philadelphia*, 47 F. 3d. 1311, 1330 [3rd Cir. 1995]). Dismissal of Plaintiffs' claims as a discovery sanction, would be unjust and unwarranted, as granting an extension to complete Plaintiff Profile Forms does not cause substantial prejudice to Defendants.

The Defendants' two failed bankruptcy attempts caused nearly two years of delay in this MDL. It is certainly not prejudicial to Defendants to wait an additional 30 days for a discovery document on these specific cases, given their continued delay tactics, and the fact that none of these claimants are slated to proceed to trial any time soon. The specific circumstances for these Plaintiffs warrant an extension of time.

PLAINTIFF WHOSE CASE CAN BE VOLUNTARILY DISCONTINUED

The following case can be voluntarily discontinued:

1. Eleanor Mancini (3:17-cv-12662). The parties have conferred and are currently discussing

the appropriate mechanism of dismissal and as such have agreed to remove this claimant from the current order to show cause.

PLAINTIFFS WHO NEED ADDITIONAL TIME

Plaintiffs' Counsel respectfully requests thirty (30) days, until August 2, 2024, to submit the Plaintiff Profile forms for the following 4 Plaintiffs:

1. Renee Doyle (3:17-cv-12715)- recently passed away on December 1, 2023.
2. James Fierro (3:17-cv- 12716)
3. Patricia Christian (3:17-cv-12719)
4. Robert Gadfield (3:17-cv-12704)

CONCLUSION

For all of the reasons raised above, the Plaintiffs respectfully request that the Court not dismiss Plaintiffs' claims and instead extend the above Plaintiffs' deadline until August 2, 2024, to submit their Plaintiff Profile Forms.

July 2, 2024

Respectfully submitted,

/s/ Christopher R. LoPalo
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on July 2, 2024, the foregoing pleading was filed electronically with the Clerk of the Court using the CM/ECF system, which notifies all Counsel of record via electronic mail.

/s/ Christopher R. LoPalo